IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE GUANTANAMO BAY DETAINEE LITIGATION	Misc. No. 1:12-mc-398 (RCL)
SAEED MOHAMMED SALEH HATIM, et al., Petitioners, v. BARACK H. OBAMA, et al., Respondents.	Civil No. 1:05-cv-1429 (RCL)
FADHEL HUSSEIN SALEH HENTIF, et al., Petitioners, v. BARACK H. OBAMA, et al., Respondents.	Civil No. 1:06-cv-1766 (UNA)
ABDURRAHMAN ABDALLAH ALI MAHMOUD AL SHUBATI, et al., Petitioners, v. BARACK H. OBAMA, et al., Respondents.	Civil No. 1:07-cv-2338 (UNA)

RESPONDENTS' OPPOSITION TO PETITIONERS' EMERGENCY MOTIONS CONCERNING ACCESS TO COUNSEL

The government has not barred and is not barring any communications or visits between the detainees at Guantanamo Bay and their counsel. As Petitioners' Motions implicitly concede, the government, at counsels' request, has scheduled visits and telephone calls and made the necessary facilities available. Rather, it is Petitioners[1] themselves who have thwarted counsels' visits and telephone calls by refusing to travel to the sites where those activities occur.

Petitioners allege that Joint Task Force-Guantanamo (JTF-GTMO) has changed certain security procedures at the detention facility to interfere with their access to their attorneys, but they have adduced no competent evidence to corroborate their claims, and they are false. To be clear, JTF-GTMO is not retaliating against any detainee for participating in a hunger strike, or seeking to intimidate any detainee from talking with his counsel. And specifically, no order has been given nor procedure adopted that requires a detainee to have his genitals or buttocks groped, fondled, or otherwise mishandled during a search.

What has happened is that the Commander of the Joint Detention Group (JDG) at Guantanamo Bay reviewed the procedures in place and made considered judgments that changes to procedures involving detainee movements and contacts with non-JTF-GTMO personnel were necessary to ensure the security of the facility, the guard force, and the detainees under his care. First, over nine months ago (and five months before the start of the current hunger strike), he decided for operational and security reasons that counsel visits with any detainee had to be conducted at dedicated facilities located adjacent to or near the camps in which the detainees are

[1] By the term "Petitioners," the government refers to Guantanamo Bay detainees al-Shubati (ISN 224), Hentif (ISN 259), and Hatim (ISN 255), the three Petitioners on whose behalf these two Emergency Motions were filed. While Petitioner Hatim asserts complaints on behalf of a number of other detainees, see Emergency Mot. Concerning Access To Counsel, Dkt. 416 (May 22, 2013) at 1 & 1-2 n. 1, the Court would lack jurisdiction in this proceeding to grant relief to petitioners who are not parties in these cases.

housed. Ex. 1, Decl. of Col. J. Bogdan, Commander, Joint Detention Group, ¶¶ 13-16.[2] This new meeting-location policy was not a major change. While, in the past, some counsel meetings had been permitted in rooms located in one of the camps where detainees reside, the norm has long been that they would be transported to the nearby dedicated facility. Id. at ¶ 5.

A second change was similarly minor. On May 3, 2013, the procedure used to physically search detainees was changed. In the past, the area between a detainee's waist and mid-thigh was not physically touched but, rather, was checked by shaking the detainee's pants legs. Col. Bogdan Decl. ¶ 17. As a result of a command investigation, the discovery of contraband that had evaded detection under the prior procedures, and preexisting command concerns, Joint Task Force- Guantanamo Bay (JTF-GTMO) adopted the standard frisk-search procedure used world-wide throughout the United States Army for frisking prisoners. Id. ¶¶ 17-19. As applied to the waist-thigh area, this procedure requires a guard to gather and crush the fabric of the detainee's pants pockets to check for any objects in the pockets. The guard will touch the fabric on the outside of the detainee's waistband and shake it vigorously to dislodge any contraband. Id. ¶ 20. Specifically with regard to the groin area, at no time is the detainee's groin exposed to the guard. Id. The groin is searched by placing the guard's hand as a wedge between the scrotum and thigh, and using the flat hand to press against the thigh to detect anything foreign attached to the body. Id. A flat hand is used to ensure no contraband is hidden in the buttocks. Id. Also as part of the search, a metal detector wand is also passed over, but not touched to, the waist-thigh area. Id. ¶ 21.

[2] Because Exhibit 1, the Declaration of Col. Bogdan contains protected information as defined in the Protective Order, Respondents are designating that exhibit and this brief as protected information and make their filing under seal.

These changes are related, because each time a detainee leaves from or returns to his camp of residence for any reason he must be searched. Bogdan Decl. ¶ 19. Petitioners, objecting to the revised search procedure, and to the van transportation provided to counsel calls and visits, have voluntarily chosen not to receive telephone calls or visits from their attorneys so that they may avoid the required search. Petitioners' voluntary actions, however, cannot give rise to a claim that these procedures have restricted their access to counsel.

First, Petitioners may not directly challenge these security procedures. By statute, Congress has exercised its constitutional prerogative to withdraw from the federal courts jurisdiction to consider conditions-of-confinement claims from detainees at Guantanamo Bay. *See* 28 U.S.C. § 2241(e)(2). As the new frisk-search and visit-location policies are simple conditions of confinement, any direct challenge to them is barred.

To avoid this jurisdictional bar, Petitioners attempt to invoke this Court's jurisdiction under the Suspension Clause, U.S. Const., art. I, § 9, cl. 2, alleging that the new policies and procedures threaten their ability to pursue their habeas rights by interfering with their access to counsel. The effort fails, however. As discussed more fully below, the frisk searches are conducted in accord with long-established U.S. Army policy and involve no physical handling of a detainee's genitals; the newly acquired vans, procured to meet detainee complaints about inadequate air-conditioning, are being modified to permit detainees to sit upright during transit; and, most tellingly, the number of counsel visits and phone calls has increased, not fallen, since the new search policy was implemented. These facts demonstrate that no interference with Petitioner's access to counsel has occurred that would remove their claims from the scope of § 2241(e)(2)'s prohibition.

But even assuming that jurisdiction would lie, Petitioners' claims still fail. Even with respect to prisoners and pre-trial detainees in the domestic criminal context, who are possessed of the full panoply of constitutional rights, the Supreme Court has long held the courts must defer to the considered judgment of detention facility administrators concerning the management of their facilities. Accordingly, the Supreme Court has upheld a long list of prison regulations alleged to have restricted constitutional rights.[3] Particularly pertinent here, this precedent includes a series of cases where the courts have routinely upheld physical body searches of prisoners and pre-trial detainees far more intrusive than those at issue in this matter, despite the alleged discouraging effects that these searches had on attorney-client meetings. See, e.g., Bell v. Wolfish, 441 U.S. 520, 560 (1979) (overruling Fourth Amendment challenge to visual-body-cavity searches on pretrial detainees after contact visits, despite alleged impact on the detainees' meetings with their attorneys); Goff v. Nix, 803 F.2d 358, 366-370, 370 (8th Cir. 1986) (upholding visual-body-cavity searches of prison inmates after any contact visits, including visits with family, medical personnel, attorneys, and even the prison chaplain; and compiling cases); cf. Ex. 2, Fed. Bureau of Prisons, Program Statement 5521.05 at 3 (June 30, 1997) (authorizing visual-body-cavity searches after contact visits in a visiting room).

Here, their briefs notably devoid of legal analysis, Petitioners fail to cite any of this analogous precedent, let alone distinguish it. Consequently, Petitioners misframe the issue before the Court. The issue is not whether the security procedures at issue have a collateral impact on Petitioners' access to counsel; their validity does not turn on the answer to that question. See Goff, 803 F.2d at 369 n.11 (rejecting argument that an otherwise constitutional

[3] E.g., Turner v. Safley, 482 U.S. 78, 93 (1987) (upholding ban on inmate-to-inmate correspondence); Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 133 (1977) (upholding ban on prisoners' labor-union activities); Pell v. Procunier, 417 U.S. 817, 833-835 (1974) (upholding ban on inmate interviews with the media).

search is invalid because inmates voluntarily refuse to meet with their attorneys to avoid the search). Rather, the well-settled test to assess the validity of the security procedures in the face of allegations that they discourage Petitioners from meeting with their counsel is whether they are reasonably related to legitimate penological interests. Turner, 482 U.S. at 89. As set out below, applying this test here establishes that the Court should deny Petitioners' Emergency Motions.

FACTUAL BACKGROUND

Under this Court's September 11, 2008, Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, detainees and their habeas counsel are permitted to meet together in person and may send and receive privileged legal mail. See Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, ¶¶ 11-38, 577 F. Supp. 2d 143 (D.D.C. 2011). Legal visits are subject to appropriate security measures. See, e.g., id. ¶¶ 32-35, 38 (noting certain security procedures applicable to habeas counsel). Further, as ordered by the Court, "Legal visits shall take place in a room designated by JTF-Guantanamo." Id. ¶ 11(b). Counsel-detainee meetings are subject to visual monitoring by JTF-GTMO staff, either through cameras or by guards stationed outside the meeting room. Id. ¶ 37. JTF-GTMO also regularly permits, based on need, telephone calls between counsel and detainees of up to 90 minutes in duration. These calls can be made over a secure line or in some instances unsecure lines.

During May 2013, JTF-GTMO approved 42 counsel visits (denying only two). Of these 42, 22 were completed, 13 were cancelled, and 7 were refused by detainees. In April, JTF-GTMO facilitated 17 completed counsel visits, while an additional 11 were cancelled and 3 were refused. In March, there were again 17 completed visits, 14 were cancelled, and 5 were refused.

These numbers compare with a maximum of 21 visit requests approved for any of the months between September 2012 through February 2013, only 6 of which were not approved due to a conflict with military commission proceedings.

Detainees such as Petitioners are housed in either Camp 5 or Camp 6, separate but adjacent housing facilities operated by JTF-GTMO. Detainee visits with counsel and telephone calls with family members occur at Camp Echo, which requires a brief van ride for transportation. Col. Bogdan Decl. ¶ 22. Due to telecommunication requirements, detainee telephone calls with counsel occur at Camp Delta, again, a brief van ride away. Id..

I. The Facilities At JTF-GTMO For Counsel Visits and Telephone Calls

Camp Echo

Camp Echo has been specifically set up to facilitate meetings with detainees, including legal visits, in a secure and safe environment. International Committee of the Red Cross meetings with detainees, JTF-GTMO-monitored detainee phone calls to family, and counsel-detainee meetings have historically been primarily held at Camp Echo. Col. Bogdan Decl. ¶ 5. Special security measures have been established at Camp Echo, and equipment and guard staff are dedicated at Camp Echo, to facilitate detainee meetings. Id. For example, Camp Echo contains a specialized facility to screen visitors for prohibited contraband before they meet with a detainee. Id. ¶ 6. The Privilege Team (the group created by the Protective Order to conduct contraband and, upon the request of counsel, classification reviews of attorney-client communicactions, see, e.g., Protective Order ¶¶ 12, 19-24) can meet with counsel at Camp Echo to perform any necessary screening not previously done before counsel's trip. Col. Bogdan Decl. ¶ 6. And if any disagreements arise, discussions to resolve them can be conducted in private at Camp Echo. Id. Guards at Camp Echo may monitor meeting rooms from a centralized

location via video monitors, thereby allowing the guards to leave the meeting room unattended once they have escorted a visitor or a detainee to the meeting. Id. Attorneys using a room can press a button for immediate access to guard force, if needed. Id.

The meeting rooms at Camp Echo are specifically designed for detainee meetings. Col. Bogdan Decl. ¶ 5. They can accommodate up to five people, including the detainee. Id. There are six meeting rooms available for attorney use, which allows six attorney teams to meet with their clients at the same time. Id. Each room contains a table, a restroom for the detainee, and a space for detainee prayer. Id. Camp Echo also allows for additional privileges previously requested by detainees and attorneys. At Camp Echo, upon request and approval, counsel may bring and watch commercial DVDs with their clients, look at books with their clients, and bring food for their clients to a meeting. Id. ¶ 6.

Camp Delta

All attorney telephone calls with detainees are conducted in Camp Delta.[4] Col Bogdan Decl. ¶ 8. There is no capability to facilitate attorney calls in Camps 5 or 6, and telephone calls have not been conducted in those locations. Id.

Camp 5

Camp 5 currently has no facilities for attorney visits or telephone calls. Col. Bogdan Decl. ¶ 9. Records indicate that no counsel visits have occurred in Camp 5 since 2009. Id. Camp 5 is a maximum security detention facility in which detainees are housed in single cells. Each passageway, referred to as a block, contains between 12 and 14 cells. Id. ¶10. There are no rooms available for attorney-client meetings in Camp 5. Id. ¶11. Meetings cannot occur on a block itself because of the threat that the detainees, having detected the presence of a "new"

[4] As noted above, detainee telephone calls with their families occur at Camp Echo.

individual, will start a mass disturbance, assaulting the new individual and the guard force either directly or with bodily fluids. Id. Therefore, any counsel meeting at Camp 5 would have to occur in a room outside a block. Id. None are currently available, so one would have to be converted for this use. Id. But this situation would create its own dangers. Id. Meetings within Camp 5 would require the guard force to stop all detainee movements while meetings were being held, likely disrupting the movement of all other detainees for recreation or other appointments, and also disrupting routine evolutions such as daily prayers, meals, medical visits, and mail delivery. Id. ¶ 12.

Camp 6

There are two small rooms in the Camp 6 that had been used upon special request in the past for legal visits. Col Bogdan Decl. ¶ 14. These rooms are located in an operational area of the camp. Id. Accordingly, a detainee would still have to exit his housing area and, so, be subject to search, to participate in a counsel meeting in Camp 6. Id. ¶ 19. These rooms were not designed for counsel visits. They are small, capable of accommodating only the detainee and two other individuals. Id. ¶ 14. Moreover, unlike the rooms dedicated to attorney visits at Camp Echo, these rooms cannot be centrally visually monitored by the guard force. Id. ¶ 5. Accordingly, guards must be stationed outside of these rooms during counsel meetings to prevent detainee misconduct and to safeguard the visiting counsel. Id. ¶ 14. Additionally, because these rooms are so small, there is insufficient space to accommodate a restroom for the detainee or a place for detainee prayer. Therefore, a detainee would have to leave the meeting room either to use the restroom or to participate in prayers. Id. ¶ 5. For security reasons, DVDs and outside food are not permitted in Camp 6, unlike Camp Echo.

II. Changes To The Procedures For Counsel Visits And Telephone Calls

The changes to the procedures for searching detainees for external moves and meetings with non-JTF personnel as well as the change to the location for attorney meetings were based on a review of the procedures by the JDG Commander and a determination that such changes are necessary to ensure the safety and security of the camps. Searches of a detainee when being moved externally from his camp of residence or for a meeting with non-JTF personnel have always been conducted, they were just modified. The nature of the changes to visit and telephone call procedures, and the reasons therefore, establish that JTF-GTMO did not implement any of them to intimidate or retaliate against Petitioners or any other detainee.

Cessation of Counsel Meetings In Camp 6

When Col. Bogdan assumed command of the Joint Detention Group in June, 2012, he began a complete review of all policies and procedures for the operation of the detention facility. Id. Based on that review, he concluded that counsel meetings in Camp 6 should no longer be permitted. His reasons for this conclusion, grounded in facility security, included:

- The necessity of counsel passing through visitor-screening center in Camp Echo, even if they were going to Camp 6. Col. Bogdan Decl. ¶ 6.
- The centralized room-monitoring facility in Camp Echo, which frees guards for other duties during meetings other than standing watch outside the meeting room, and permits counsel to watch DVDs, read books, and share food with their clients. Id.
- The size and makeup of the rooms, to include a separate restroom facility in each meeting room as well as a space that can be used by the detainee for prayer. This permits more people to meet at one time and permits the meeting to continue after a detainee participates in prayer or uses the restroom.
- The need to divert guards and Staff Judge Advocates from other duties to escort counsel to and from meetings in Camp 6 from the visitor screening center in Camp Echo. Id. ¶ 15.
- The lack of a dedicated restroom or the ability to participate in prayers in the rooms in Camp 6, requiring further detainee moves during meetings. Id. ¶ 5.

- The impact of Camp 6 meetings on the guard force. Because of the lack of a centralized visual monitoring facility, counsel visits in Camp 6 require stationing guards outside the room during the visit to ensure the safety of counsel and to discourage and prevent misconduct by the detainee. This diverts the guards from other tasks necessary for the maintenance of order and to ensure the safety and security of the detainees, such as coordinating multiple movements for recreation, medical appointments, and showers, or monitoring meal service, prayer calls, and medical rounds. Id. ¶ 15.

- The related need, if meetings took place in Camp 6, to coordinate all routine movements around scheduled meetings so that no other detainees are moved while an attorney or client are in transit to and from a meeting. To avoid the risk of assault on or injury to visiting counsel or other potential disruptions, movements can only occur when the attorney and client are inside the meeting room. Id.

Accordingly, Col. Bogdan decided in September, 2012 – long before the current hunger strike began – to cease counsel visits in Camp 6 for valid security reasons. Id. ¶ 14.

Van Transportation

The size of the van used to transport detainees between camps has recently changed slightly as a result of routine fleet replacement. Detainees are transported from Camp 5 or Camp 6 to legal calls and meetings external to their camp in full-sized Ford Econoline vans. Col. Bogdan Decl. ¶ 22. The van fleet has been modified for corrections use, including with windowless panels in the rear areas where detainees are seated. Id. On April 1, 2013, JTF-GTMO introduced a number of new vans after completing a routine fleet upgrade and to address detainee complaints about a lack of air conditioning in the older vans. Id. The new models have larger air ducting, and correspondingly lower ceilings. Id. Detainees are not shackled to the floor of the van, but are seated and restrained by a five-point fabric seat belt harness. Id. Unfortunately, the vendor used incorrect specifications, making the benches on which the detainees sit too high given the lower ceiling of the new vans. Consequently, some detainees must sit in a somewhat bent position for the brief journey to Camp Echo or Camp Delta. Id.

JTF-GTMO is working with the contractor that supplied the replacement vans to lower the benches in the vans so as to allow detainees to travel in an upright position. Id. Lower benches have arrived, and JTF-GTMO is in the process of awarding a contract to have them installed. Id. The older vans are still in use, so if a detainee has a medical condition that requires him to sit upright, he is transported in an older van that has higher ceilings. Id.

Security Searches

Until recently, search policy did not permit guards would to search the area from a detainee's waist to his mid-thigh unless authorized by the JDG Commander. Col. Bogdan Decl. ¶ 17; see Rev. of Dept. Compliance with President's Exec. Order on Detainee Conds. of Confinement, at 25 (2009). On May 3, 2013, however, JTF-GTMO leadership revised the search procedure for detainee movements to include frisking and wanding of this area. Col. Bogdan Decl. at 18. This revision had nothing to do with the ongoing detainee hunger strike, nor was it intended to discourage detainees from meeting or speaking with their counsel or to punish them for doing so. Id. ¶ 4. Rather, the motivation for this new search procedure was threefold. First, after taking command of the Joint Detention Group, Col. Bogdan became concerned that the modified search procedure might be ineffective in identifying weapons and contraband. Id. ¶ 17. This concern arose from the non-standard nature of the modified search. Id. Because the guard force was not accustomed to conducting searches differently than standard Army procedure prior to their arrival at Guantanamo, the searches might be done inconsistently, which could risk weapons or other contraband evading detection. Id. Accordingly, Col. Bogdan decided to use the standard Army-wide search for which the guard force had been trained. Id. Second after the suicide in September, 2012, of Adnan Farhan Abd Latif (ISN 156), who overdosed on medication that he had hoarded over a period of days, a command investigation

was convened. When the report was released in November, 2012, it recommended that Col. Bogdan reconsider the then-existing search procedures, which were deemed possibly ineffective to detect hoarded medications. Id. ¶ 18. After carefully considering the investigation report, JTF-GTMO leadership determined that safety and security required more thorough search protocols, but also decided to gradually phase the new procedures in to minimize camp disruption. Id. Lastly, the transition of Camp 6 to single-cell housing in April 2013 uncovered the presence of shanks (potential weapons) and prohibited electronic items. Id. This discovery convinced Col. Bogdan that he could no longer delay implementing the new search procedure. Id.

The new protocol includes frisking the area between the detainee's waist and mid-thigh and hand-wanding the detainee's entire body with a metal detector, as prescribed by STP 19-31E1-SM, a standard Army-wide procedure in which JTF-GTMO personnel have been trained, and which is used at other military detention facilities and prisons worldwide (attached as Exhibit 3). Col. Bogdan Decl. ¶ 19. Under this standard procedure, a guard gathers and crushes the fabric of the detainee's pants pockets to check for any objects in the pockets. Id. ¶ 20. The guard will touch the fabric on the outside of the detainee's waistband and shake it vigorously to dislodge any contraband. Id. Specifically with regard to the groin area, at no time is the detainee's groin exposed to the guard. Id. The groin is searched by placing the guard's hand as a wedge between the scrotum and thigh, and using the flat hand to press against the thigh to detect anything foreign attached to the body. Id. A flat hand is used to ensure no contraband is hidden on the buttocks. Id. Also as part of the search, a metal detector wand is also passed over, but not touched to, the waist-thigh area. Id. ¶ 21.

Detainees are searched whenever they are moved for an appointment external to their housing camp, and they would also be searched for a meeting internal to their camp when the meeting or appointment is with non-JTF-GTMO personnel. Id. ¶ 19. Therefore, the same search procedures would apply whether a detainee was leaving Camp 6 to meet or speak with his attorney or, instead, was meeting his attorney inside Camp 6. Id.

ARGUMENT

Petitioners complain about three aspects of the current procedures governing their visits and telephone calls with counsel: (1) the occurrence of counsel visits and telephone calls outside of Camps 5 and 6, requiring detainees to be moved from those camps; [5] (2) the van transport required for moving the detainees for such visits and calls; and (3) the search procedure associated with attorney visits and telephone calls, at least with regard to search of the waist-to-thigh area. Because the governing Counsel Access Procedures in this case explicitly permit JTF-GTMO to select the location of such meetings, and sound reasons support the locations selected by JTF-GTMO, as well as the fact that the vast majority of all counsel visits have occurred outside Camps 5 and 6 at least since September 2012, and likely longer, Petitioners' complaints about the locations of meetings and phone calls appear to be based on nothing more than the search and van transport required for such meetings.[6]

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[5] As an initial matter, there is no evidence that phone calls were ever conducted inside Camp 5 or 6 so no change has occurred with respect to the location for phone calls. In addition, a review of GTMO records indicates that no attorney visits have occurred in Camp 5 at least as far back as 2009 when the record was started so again, it appears there has been no change to the location for attorney meetings of those detainees residing in Camp 5.

[6] Petitioners' motions also seem to be based on the erroneous assumption that if counsel visits were permitted to take place in Camp 6, detainees would not be subject to search. As explained supra, if counsel meetings occurred in Camp 6, detainees would still be searched going to and from the meeting given that they were meeting with non-JTF-GTMO personnel.

As explained below, to the extent Petitioners are merely dissatisfied with the search and transport conditions, their claims are barred by statute. See 28 U.S.C. § 2241(e)(2) (withdrawing court jurisdiction over detainees' claims concerning "any aspect of . . . detention, transfer, treatment, trial, or conditions of confinement"). Petitioners seek to evade this bar by claiming that the search and perhaps the van transport interfere with their access to counsel and their right to pursue habeas corpus. But JTF-GTMO is neither prohibiting or unduly interfering with counsel visits and telephone calls. To the contrary, JTF-GTMO in the last several months has accommodated, and regularly continues to accommodate, large numbers of counsel visits and telephone calls, at a rate greater than the months immediately preceding the new search procedure. Petitioners utterly fail to demonstrate any interference with counsel visits or telephone calls beyond their mere voluntary refusal to attend such meetings or telephone calls because of their dissatisfaction with the revised search procedures and van outfitting. Petitioners should not be permitted in such circumstances to circumvent the plain statutory bar by equating their dissatisfaction with the search procedures and van transport with an interference with their right to pursue habeas corpus.

Even if their claims were not barred, Regardless of the statutory bar, however, Petitioners' complaints should be rejected on the merits. With respect to the revised search procedures, long-standing analogous precedent forecloses Petitioners' requested relief. Were Petitioners inmates in civilian federal penitentiaries, they would be subject to much more invasive visual-body-cavity searches, during which they would be forced to strip, hold their genitals to the side, and spread their buttocks. See Ex. 2, Federal Bureau of Prisons, Program Statement 5521.05 at 3 (June 30, 1997) (authorizing visual-body-cavity searches after contact visits in a visiting room). Notably, the courts have routinely upheld these cavity searches, not

only for convicted inmates, but also for detainees awaiting trial who have yet to be convicted of a crime. Bell, 441 U.S. at 558-560. And they have done so in the face of the very argument on which Petitioners attempt to predicate jurisdiction in this Court, namely that it interferes with their access to counsel. Goff, 803 F.2d at 368 (noting inmates foregoing attorney meetings to avoid visual-body-cavity search). Furthermore, Petitioners' complaints about the van transport are not substantial and do not warrant relief. The reduced headroom in the transport vans resulted from JTF-GTMO's attempt to respond to complaints about a lack of air conditioning; it is an issue JTF-GTMO is working to address; and Petitioners' make no serious showing that the temporary inconvenience or discomfort associated with the reduced headroom interferes with their ability to pursue their habeas cases.

I. THE COURT LACKS JURISDICTION OVER CONDITIONS OF CONFINEMENT CLAIMS

Federal courts are courts of limited subject-matter jurisdiction. E.g., Al-Zahrani v. Rodriguez, 669 F.3d 315, 318 (D.C.Cir. 2012). Accordingly, for a federal court to exercise jurisdiction, "the Constitution must have supplied the courts with the capacity to take the subject matter and an Act of Congress must have supplied jurisdiction over it. Id. Here, through Section 7 of the Military Commission Act of 2006 ("MCA"), 28 U.S.C. § 2241(e), Congress has exercised its jurisdictional prerogative, not to grant, but to withdraw from the federal courts jurisdiction to adjudicate conditions-of-confinement claims by detainees at Guantanamo Bay: [7]

[7] The All Writs Act does not abrogate the jurisdictional bar of section 2241(e)(2). That statute provides that courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). This provision has been consistently interpreted to "'confine[] [a court's] authority to the issuance of process 'in aid of' the issuing court's jurisdiction'" and "'does not enlarge that jurisdiction.'" In re Tennant, 259 F.3d 523, 527 (D.C.Cir. 2004) (quoting Clinton v. Goldsmith, 526 U.S. 529, 534-35 (1999)). As discussed herein, Petitioners have made no showing that the Court's intervention in this matter is necessary

> **[N]o court, justice, or judge shall have jurisdiction** to hear or consider any other action against the United States or its agents relating to any aspect of the **detention**, transfer, **treatment**, trial, or **conditions of confinement** of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant.

28 U.S.C. § 2241(e)(2) (emphasis added).[8]

A number of floor statements demonstrated an intention, reflected in Congress' decision to withdraw court jurisdiction over detainees' conditions-of-confinement claims, to prevent the detainees from consuming resources and disrupting operations at the Guantanamo Bay Naval Base through litigation not related to the legality of their detention. See, e.g., 152 Cong. Rec. S10367 (daily ed. Sept. 28, 2006) (Sen. Graham) (noting conditions-of-confinement claims had been brought by detainees regarding mail delivery, exercise, and viewing DVDs); 152 Cong. Rec. at 19,976 (Sen. Kyl) (statute intended to avoid "disrupt[ing] the operation of Guantanamo and undermin[ing] the war on terror"); 152 Cong. Rec. H7536 (daily ed. Sept. 27, 2006) (Rep. Saxton) (noting the MCA "is an urgently needed measure . . . to protect our American troops and agents from . . . lawsuits").

The Court of Appeals has squarely held that section 2241(e)(2) is a valid exercise of congressional power. E.g., Al-Zahrani, 669 F.3d at 318-19 (upholding the continuing applicability of the section 2241(e)(2) bar to "our jurisdiction over 'treatment' cases"). And Section 2241(e)(2) has been repeatedly applied by the judges of this District to bar a variety of

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to preserve its jurisdiction over their habeas claims. Consequently, the All Writs Act provides no authority for the Court to consider claims such as Petitioners' that fall within section 2241(e)(2)'s jurisdictional bar.

[8] Petitioners are being held pursuant to the Authorization for the Use of Military Force, Pub. L. No. 107-40, 115 Stat 224 (Sept. 18, 2001), as informed by the law of war.

conditions-of-confinement requests.[9] See, e.g., In re Guantanamo Bay Detainee Litig., 577 F. Supp. 2d 312, 313-14 (D.D.C. 2008) (Hogan, J.) (holding that Boumediene, though referring in general to section 7 of the MCA, invalidated only section 7(a), 28 U.S.C. 2241(e)(1)).

Accordingly, Petitioners may not bring an action to enjoin or modify either of the new security procedures as such. On their face these procedures – manner of a physical search, the locations of visits and telephone calls, the mode of transport to those sites – are simple conditions of confinement and, so, actions seeking to invalidate them are barred by the plain language of section 2241(e)(2). See Al-Adahi v. Obama, 596 F. Supp. 2d 111, 114, 117-120 (D.D.C. 2009) (section 2241(e)(2) withdrew the Court's jurisdiction to consider a petitioner's request for "non-habeas relief to improve the conditions under which he was being held at Guantanamo Bay.").

Evidently recognizing this jurisdictional bar, Petitioners attempt to cast their complaints as a matter of counsel access that implicates their right under the Suspension Clause to challenge their detention in the courts. To that end, Petitioners allege that the new frisk searches involve offensive physical contact with their genitals and buttocks, and that they are forced into physically painful stress positions while being transported by van to Camps Echo and Delta, all

[9] See, e.g., In re Guantanamo Bay Detainee Litig., 577 F.Supp. 2d 312, 314-16 (D.D.C. 2008) (Hogan, J.) (requests for mattress and blanket, for access to medical records, and to meet with detainee's treating military physician); Tumani v. Obama, 598 F.Supp. 2d 67 (D.D.C. 2009) (Urbina, J.) (requests for transfer to less restrictive camp, to terminate interrogations, and to see father (who was another detainee)); Al-Shurfa v. Obama, 2009 WL 1451500 (D.D.C.) (Leon, J.) (requests for transfer to less restrictive camp and to evaluate detainee's competence to dismiss his case); Al-Ghizzawi v. Bush, 2008 WL 948337 (D.D.C.) (Leon, J.) (requests for transfer to civilian medical facility and for allegedly needed medical treatments); Khadr v. Bush, 587 F. Supp. 2d 225, 234-37 (D.D.C. 2008) (Bates, J.) (request for transfer to a rehabilitation and reintegration program); Al Adahi v. Obama, 596 F.Supp. 2d 111, 117-20 (D.D.C. 2009) (Kessler, J.) (request to alter enteral feeding procedures for hunger striking detainees).

in a calculated effort by the government to deter detainees from meeting with their counsel. This attempt to sidestep the jurisdictional prohibition of § 2241(e)(2) fails for numerous reasons.

First and foremost, the government did not deny any of the moving detainees' requests for counsel visits or phone calls. JTF-GTMO granted their requests for each of the visits and telephone calls at issue here, and made all the necessary preparations for them to take place. They were aborted solely because the detainees themselves refused, when the time came, to meet or speak with their attorneys.

Their claim now, that the frisk searches and van transportation required for counsel visits and phone calls are so physically humiliating and painful as effectively to prevent them from meeting with their counsel, are both unsubstantiated and at bottom false. They rest on nothing but uncorroborated assertions made by Petitioners to their counsel, which are now rebutted by the sworn declaration of Col. Bogdan. As he explains, the modified frisk-search procedure involves no groping of a detainee's genitals. Between a detainee's waist and mid-thigh, the frisk involves placing the guard's hand as a wedge between the scrotum and thigh, and using the flat hand to press against the thigh groin to detect anything foreign attached to the body. Id. ¶ 20. And a flat hand is used to ensure no contraband is hidden in the buttocks. Id. Any contact with the genitals is purely incidental and occurs with the back of the fingers or thumb. Id. This is a standard frisk performed throughout the Army. Id. The purpose of this search procedure – which applies uniformly to all detainee movements outside their camp of residence, regardless of purpose – is not to discourage or deter contact with counsel, but to remedy shortcomings in the prior search protocol confirmed by Adnan Latif's suicide.

Petitioner's claims about the physically stressful nature of the van transportation to Camps Echo and Delta are likewise counter-factual. Contrary to Petitioner's implications, the

van rides are quite brief. Col Bogdan Decl. ¶ 17. Detainees are not shackled to the floor of the van – there are no restraint points on the floors of the vans to which to shackle them. Col. Bogdan Decl. ¶ 22. Instead, consistent with standard military procedure, they are secured in their seats using a five-point fabric harness. Id. Some detainees must bend over during the ride because of the air-conditioning ducts in the ceilings of the newly acquired vans, vans that JTF-GTMO acquired to accommodate detainees' complaints that the air conditioning in the old vans was inadequate. Id. Even now, JTF-GTMO is working to have the benches in the vans lowered so that detainees may sit upright. Id.

The proof of the matter is in the pudding. Notwithstanding the alleged barriers to counsel access that Petitioners describe, 22 counsel visits took place in May 2013; only 7 were refused by detainees. These figures exceed the number of detainee calls and visits in March and April 2013, the two months immediately preceding the adoption of the new frisk-search procedure and the purchase of the new vans. It is evident from these figures that the frisk-search and meeting-location policies, as an objective matter, have had no adverse collective effect on detainees' ability to meet and speak with their counsel. Under these circumstances, Petitioners should not be permitted to circumvent a plain statutory bar by equating their personal dissatisfaction with the frisk-search and meeting-location policies with an interference with their right to pursue habeas corpus.[10]

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[10] Moreover, access to counsel is, at bottom, "only [a] means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Lewis v. Casey, 518 U.S. 343, 351 (1996) (internal quotations and citations omitted). Therefore, to establish a violation of their habeas rights falling within the Court's jurisdiction under the Suspension Clause, Petitioners must also demonstrate that they have suffered "actual injury," i.e., that a lack of sufficient access to their counsel has "hindered.[their] efforts to pursue [habeas] claim[s]." Id. Petitioners have made no such showing. Cf. Bruscino v. Carlson, 854 F.2d 162, 167 (7th Cir. 1988) (rejecting argument that "that the indignity of having to submit to rectal searches discourages inmates from meeting with their lawyers" where there was "no

II. The Challenged Procedures Are Valid

Even if Petitioners had made a credible showing that the new frisk-search and meeting-location policies have some impact on detainees' ability to meet and speak with their counsel, which they have not, they still would not be entitled to extraordinary relief dictating to military prison officials the terms and conditions under which detainees will be permitted to meet and speak with persons from outside the facility.

In the domestic prison context, the Supreme Court has long held that prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell, 441 U.S. at 547. This deference recognizes that prison administrators, not the courts, are the subject-matter experts when it comes to operating and safeguarding prisons. See Turner, 482 U.S. at 85 (recognizing that prison administration is an "inordinately difficult undertaking" requiring expertise, planning, and resources that are "peculiarly within the province of the legislative and executive branches"); Procunier v. Martinez, 416 U.S 396, 404-405 (1974) (prison administrators must deal with complex, intractable problems that "are not readily susceptible of resolution by decree"). Accordingly, courts cannot "freely substitute their judgment for that of officials who have made a considered choice." Whitley v. Albers, 475 U.S. 312, 322 (1986). Detention officials "are to remain the primary arbiters of the problems that arise in the facility." Shaw v. Murphy, 532 U.S. 223, 230 (2001). Consequently, even where prison regulations are said to infringe on constitutionally

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evidence of any prejudice to an inmate in bringing or prosecuting a lawsuit" as "[n]o one fell under the bar of a statute of limitations, no one failed to make a timely filing, no one was denied legal assistance to which he was entitled, no one lost a case he should or could have won.")

protected interests of prison inmates, they will be upheld so long as they are reasonably related to legitimate interests of prison security and operations. Turner, 482 U.S. at 89.[11]

Here, the objective – security – is legitimate. It is well-settled that the "internal security of a detention facility is a legitimate government interest," Block v. Rutherford, 468 U.S.576, 586 (1984), perhaps the most legitimate concern, Overton v. Bazzetta, 539 U.S. 126, 133 (2003). See also Bell, 441 U.S. at 546 ("Maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees."); Pell, 417 US at 873 ("Central to all other corrections goals is the institutional consideration of internal security with the corrections facilities themselves.").

And the required connection between this legitimate objective and the two challenged procedures is readily demonstrated.[12] As for the challenged search procedure, precedent readily establishes the requisite logical connection. In Bell v. Wolfish, the Supreme Court upheld visual-body-cavity searches of pretrial detainees, 441 U.S. at 558-560, searches that were conducted after every contact visit with someone from outside the facility, including visits with defense attorneys, id. at 576-577 (Marshall, J., dissenting). The Court rested its holding on the obvious connection between the serious security dangers inherent in a detention facility and the

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[11] As reflected in the commentary to Chapter VI of the Third Geneva Convention of 1949, the law of war similarly recognizes that a "Detaining Power can carry out its duty to treat prisoners of war in accordance with the Convention only if it ensures that discipline is maintained in prisoner-of-war camps. And in fact disciplinary measures do assist the application of standards designed to improve the situation of the prisoners in the camp. A considerable part of the Convention is therefore composed of Articles providing for the establishment or strengthening of discipline in prisoner-of-war camps . . . ." See Jean S. Pictet, ed., Geneva Convention Relative to the Treatment of Prisoners of War: Commentary at 238 (Geneva: International Committee of the Red Cross, 1960).

[12] The logical connection between objective and procedure is not high; the connection need only be not so "remote as to render the policy arbitrary or irrational." Turner, 482 U.S. at 89-90.

ability of detainees to smuggle money, drugs, weapons, and other contraband as a result of a contact visit. Id. at 559. And it did so despite the factual finding that only one case of smuggling had ever been detected during these searches, relying on a further logical connection between the searches and their deterrent effect on smuggling. Id.; see also id. at 551 n.32 (noting that detention facility administrators should be permitted to prevent a problem before it arises); see Goff, 803 F.2d at 367-369 (upholding visual-body-cavity searches after contact visits by inmates not only with attorneys, but even with the prison chaplain, because even conceding that the chaplain was unlikely to smuggle contraband, prisoners might still obtain contraband from other sources during these visits).

The rational connection between adequate searches and the need for institutional security found in Bell and Goff is equally present here. As explained by Col. Bogdan, the prior policy, because of its inconsistency with standard procedures in which U.S. Army personnel are trained, created a risk that detainee searches would not be effective in uncovering weapons or contraband, such as the smuggled medications that Adnan Latif used to end his life. Thus, the decision by JTF-GTMO to alter their search procedures to enhance the safety of guards and detainees easily passes muster, even in the face of Petitioners' claims of interference with access to their counsel.

This is all the more so, considering that courts, including the Supreme Court, have sustained far more intrusive search procedures than those now in effect at Guantanamo. In Bell, for example, the Court upheld visual body-cavity searches of pre-trial detainees that required prisoners to lift their genitals and spread their buttocks for inspection. 441 U.S. at 558-560 & n.39. [13] See also Goff, 803 F.2d at 367-370 (similarly upholding visual body-cavity searches of

[13] Notably, while the district judge had enjoined the visual body-cavity searches, he nevertheless

prison inmates). The frisk searches that Petitioners complain of here do not begin to approach the level of intrusiveness of the search procedures approved in Bell and Goff, and so these frisk searches, a fortiori, withstand constitutional attack.

The transportation of detainees to Camp Echo for counsel visits (and to Camp Delta for telephone calls) is also a perfectly valid procedure that is rationally related to legitimate prison security and operational interests. As an initial matter, it is difficult to understand what Petitioners hope to gain by suddenly insisting, ten months after the new visit location policy was put in place, that counsel visits take place in Camp 6. Even if that request were granted, they would still have to endure the body searches they claim to find objectionable, as those searches must be conducted before and after all meetings with non-JTF GTMO personnel, regardless of where they take place. Col. Bogdan Decl. ¶ 19. And the claimed physical discomfort of the van rides will soon be remedied by the installation of lower benches that will allow detainees to sit upright during transport to Camp Echo or Camp Delta. Id. ¶ 22. In any event, as Col. Bogdan's declaration establishes, conducting meetings in Camp 6 would divert guards from other security duties, disrupt the movements of other detainees, and interfere with routine operations of the Camp. Id. ¶ 15. Accordingly, here, too, there is a valid connection between camp security and the challenged policy.[14]

Turner identified three additional factors that courts may take into account when evaluating the reasonableness of challenged prison regulations. 482 U.S. at 90-91. These factors reinforce the conclusion that the challenged frisk-search and meeting-location policies are

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approved the use of only slightly less invasive strip searches after detainee contact visits, 441 U.S. at 558, an alternative still far more intrusive than the frisk searches to which Petitioners are now subject.

[14] As noted in Col. Bogdan's declaration, attorney-detainee telephone calls occur in Camp Delta in light of the appropriate telecommunications facilities available there. Col. Bogdan Decl. ¶ 8.

reasonable, and lawful. The first of these additional factors involves consideration of alternative methods for detainees to exercise their allegedly infringed constitutional right. 482 U.S. at 90. This factor has little bearing on the situation here, where the government is not barring either visits or telephone calls. The government continues to schedule calls and meetings on request, to prepare the necessary facilities and to make the needed transportation arrangements. Nor is this a situation in which a government regulation has the effect of barring counsel visits or calls. Cf. O'Lone, 482 U.S. at 346-47 (prison work-assignment regulation prevented certain Muslim prisoners from returning to the prison in time for Friday communal prayers). As the record reflects, counsel visits and phone calls have continued apace since adoption of the challenged policies. Rather, it is Petitioners here who have decided of their own accord not to accept calls or visits from their attorneys, in protest of the security procedures to which they allegedly object. That may be their prerogative, but it does not give rise to a violation of a constitutional right to counsel. See Bell, 441 U.S. at 559-60; id. at 577 (Marshall, J., dissenting) (noting that detainees had foregone visits with counsel to avoid the visual body-cavity searches upheld by the Court); see also Goff, 803 F.2d at 368-69 (noting that inmates were forgoing attorney meetings to avoid visual body-cavity searches upheld by the court)

The next factor identified in Turner inquires about the impact that accommodating the detainees' asserted right would have on others (such as guards, and other prisoners). 428 U.S. at 91. This factor is easily satisfied here. Reverting to the old search policy of merely shaking detainees' pant legs, and permitting counsel meetings in Camp 6, would mean restoration of the same security risks to detainees, guards, and counsel, and the same operational disruptions and difficulties, that led JTF-GTMO to adopt the challenged policies in the first place. See Thornburgh v. Abbott, 490 U.S. 401, 418 (1988) (where an asserted right "can be exercised only

at the cost of significantly less liberty and safety" for prison guards and other inmates, courts should defer to the decision to adopt the challenged policy).

The final factor weighs whether there are ready alternatives to the challenged procedures that can accommodate the asserted right at de minimis cost to legitimate prison interests. Turner, 482 U.S. at 90-91. Here, Petitioners have identified none. Close supervision, the alternative Petitioners suggest to patdowns, has been proven by experience to be an inadequate substitute for physical searches, as prisoners may acquire and hide contraband even under close observation and scrutiny. See Block, 468 U.S. at 586. The alternative they suggest to visits at Camp Echo, counsel visits in Camp 6, would impose significant costs in terms of guard-force diversion and interruption of other scheduled detainee movements and camp operations (while providing no relief from the frisk searches that Petitioners object to). In short, consideration of these additional factors also supports the rationality and validity of the frisk-search and meeting-location policies.

* * *

In summary, this is at bottom a challenge to routine conditions of confinement that Petitioners may find disagreeable, but which is jurisdictionally barred by § 2241(e)(2). Their claims that the frisk-search and meeting-location policies were adopted with the purpose and effect of interfering with their access to counsel are unsubstantiated and affirmatively refuted by the competent evidence of record. Hence they cannot succeed in removing this matter from the ambit of § 2241(e)(2)'s prohibition. Even if the change in search procedures, and the restriction of counsel visits to Camp Echo, involve Petitioners' access to counsel, those policies remain constitutionally valid. Both are rationally connected to the legitimate government concern of detention facility security, and orderly prison operations. Thus, even if Petitioners' own choice

to refuse visits by their counsel to avoid succumbing to these policies could rightly be characterized as an infringement on their access to counsel, that choice does not render the challenged policies invalid.

CONCLUSION

Facially, Petitioners' request is extraordinary: they seek an order from this Court that they not be subject to a standard pat-down search over roughly one-third of their body, and that they be permitted to meet with their counsel at a location within the prison of their choosing. It is highly doubtful that any court, using any standard, would ever issue such an order to a prison administrator. Moreover, in making this extraordinary request, they failed to call to the Court's attention the governing precedent. As the above analysis shows, even if they had, their request could not stand. Both the new search procedure and the restriction of counsel visits to Camp Echo are valid exercises of JTF-GTMO discretion, Petitioners' resulting voluntary cessation of visits and telephone calls with counsel notwithstanding. Accordingly, the Emergency Motions should be dismissed.

Dated: 3 June 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 3rd day of June, 2013, I served a true and correct copy of the foregoing Respondents' Opposition to Petitioners' Emergency Motions Concerning Access to Counsel via electronic mail on:

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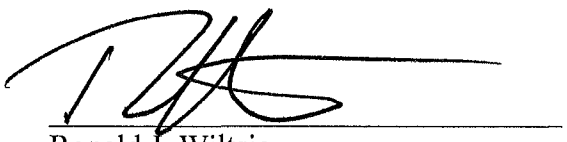

Ronald J. Wiltsie

EXHIBIT 1

DECLARATION OF COLONEL JOHN V. BOGDAN

(U) I, Colonel John V. Bogdan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. (U) I am a Colonel in the United States Army, with 29 years of service. I currently serve as the Joint Detention Group (JDG) Commander of Joint Task Force-Guantanamo (JTF-GTMO), at the Naval Station, Guantanamo Bay, Cuba. As such, I am responsible for all aspects of detention operations at JTF-GTMO and am familiar with all areas of detention within JTF-GTMO, including the conditions and operational policies and procedures of the various detention areas. I have held this position since June 7, 2012.

2. (U) This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

3. (U) JTF-GTMO procedures are established to ensure the safety of personnel and the detainees. JTF-GTMO takes very seriously the matter of counsel visits with detainees. These meetings occur on a near daily basis, and occur in the context of both habeas and Military Commissions cases. Since I assumed Command in June 2012, JTF-GTMO has facilitated over 800 commissions and habeas counsel visits with their detainee clients. It is JTF-GTMO policy to allow counsel access to their clients consistent with our established standard operating procedures and the terms of the various protective orders issued by appropriate authorities. During their stays at JTF-GTMO, counsel are provided with appropriate facilities to meet with their clients.

4. (U) Detainees are not granted or denied privileges, disciplined, or otherwise discriminated against on the basis of involvement in habeas litigation or for meeting with counsel. JTF-GTMO personnel do not discourage detainees from attending visits with their counsel. JTF-GTMO does not permit personnel to interfere with the relationship between a detainee and his counsel.

(U) CAMP ECHO

5. (U//FOUO) Camp Echo is specifically set up and designated to facilitate meetings with detainees, including legal visits, in a secure and safe environment. The meeting rooms at Camp Echo are specifically designed for attorney meetings and can accommodate up to five people, including the detainee. For example, Camp Echo meeting rooms have restroom facilities for the detainee, which are not available in the rooms at Camp 6. If the detainee would need to use the restroom in Camp 6, the meeting must end and the detainee would need to be moved by guard staff back to his cell. Furthermore, Camp Echo meeting rooms were designed to allow detainees to pause their meeting and pray during scheduled prayer times without the need to move the detainee. Once they complete their prayers, they may resume their meeting with their counsel. In contrast, Camp 6 rooms cannot support prayers and, if the detainee wishes to pray, the meeting must be terminated and the detainee escorted back to their cell. In Camp Echo, there are six meeting rooms available for habeas and commission attorney use, which allows several attorney teams to meet with their clients at the same time. Camp Echo can accommodate 6 morning sessions and 6 afternoon sessions, for a total of 12 legal visits. It is worth noting an entirely different facility is used strictly for legal meetings for those detainees classified as High

Value Detainees. Legal visits in Camp Echo increase security by minimizing the amount of unnecessary personnel in Camp 6, where the majority of detainees are being held. International Committee of the Red Cross meetings with detainees, detainee phone calls to family, and legal counsel-detainee meetings have historically been primarily held at Camp Echo.

6. (U//FOUO) Camp Echo contains a reception area to facilitate the screening of visitors for prohibited contraband before they meet with detainees. No matter where a meeting is held, all visitor screening must take place at Camp Echo because the other facilities do not have the necessary space. After screening, counsel meeting with a client in Camp Echo are escorted to the meeting room by a guard who is then able to return to his or her post and monitor the camp. Guards do not have to be posted outside the meeting rooms in Camp Echo since observation for security purposes can be accomplished from the guard shack utilizing purely visual monitors. Attorneys using the room can press a button for immediate access to guard staff. Moreover, the Privilege Team can, if resources allow, conduct a courtesy review in Camp Echo of material defense counsel may bring to the island that was not originally screened by the Privilege Team office in Washington, D.C. Camp Echo would allow the privilege team and defense counsel to discuss material in private should there be disagreement as to the nature of the material. Such a conversation could not occur in Camp 6 as there are no private spaces available other than the interview room. Attorneys can bring in food for the clients, watch commercial DVDs, and read books in Camp Echo without additional heightened scrutiny over and above the standard searches for Camp Echo. This is not the case for any meetings at Camp 6 since introduction of these items significantly increases the risk of for introduction of contraband not normally permitted in the detention camps.

7. (U) Furthermore, JTF-GTMO maintains an escort staff of guards whose exclusive mission is to support movements of detainees and visitors, including habeas counsel. This escort staff moves detainees to all external visits that occur outside of the detainee's resident camp, including medical appointments, phone calls, and attorney meetings with detainees conducted in Camp Echo. The use of the escort staff for attorney meetings at Camp Echo alleviates the need to use camp guard staff for escorting and standing watch during attorney meetings, as was necessary for meetings held in Camp 6 for the reasons explained below. This escort staff cannot be reallocated to support Camp 6 attorney visits because of the significant need for escorts during other types of detainee movements, including other attorney visits that would continue to take place at Camp Echo.

(U) CAMP DELTA

8. (U) All attorney phone calls with detainees are conducted in Camp Delta at a location that is specifically designed and equipped for telecom operations. Although other detainee phone calls, such as ICRC and family calls, are made from Camp Echo, Camp Echo is too busy with legal meetings and non-legal phone calls to support legal calls as well. Furthermore, there is no capability to facilitate attorney calls in Camps 5 or 6, and to my knowledge, calls have not been conducted in those locations in the past. Special security measures have been established at Camp Echo, and equipment and guard staff are dedicated to Camp Echo, to facilitate detainee meetings.

(U) CAMP 5

9. (U) Since I assumed Command, I am not aware of any Habeas visits having occurred in Camp 5, and furthermore, a spreadsheet maintained by my staff indicates that no legal visits or phone calls have taken place in Camp 5 since 2009. Special logistical and safety concerns, as explained below, make counsel meetings within Camp 5 unworkable, and there is no telecom capability in the camp for attorney/client phone calls.

10. (U) Camp 5 is comparable to and modeled after a maximum security, single cell detention facility in the United States. Each passageway, referred to as a block, contains between 12 and 14 cells. The cells have solid walls, but detainees can and do talk with other detainees in adjacent cells and with detainees housed on the block, as well as with guards, medical staff, library, and mail delivery personnel. Detainees are permitted to participate in uninterrupted group prayer (led by a block detainee imam of their choosing) five times per day.

11. (U//FOUO) Due to force protection and security measures, and the impact upon the guard force, it is not feasible to allow attorney meetings to occur in Camp 5. There are no rooms designed for attorney-detainee meetings in Camp 5. To accommodate attorney-detainee meetings in Camp 5 would require that JTF-GTMO permit meetings on the block itself or identify a utility or storage room not currently in use. Both scenarios would create an extremely dangerous situation for the guard staff, defense counsel, and detainee. JTF-GTMO procedures are established to ensure the safety of personnel and the detainees, and personnel on the blocks are constantly at risk of assault by the detainees. Most notably, this occurs in the form of being attacked by detainees, and assaults/splashes with bodily fluids, to include feces and urine. Allowing non-JTF-GTMO, non-USG personnel on a block can and does incite mass block disturbances. Detainees recognize when someone "new" is on the block. In the past, this has led to mass block disturbances that have included multiple detainees, in concert, assaulting or attempting to assault the guard staff directly or with bodily fluids, shouting, banging on the cell doors and windows, covering their cell windows (with blankets, sheets, mattresses, paper, soap, and/or feces) in order to obstruct the guards' view, and intentionally flooding their sinks and/or toilets. Allowing counsel or their interpreter to meet with a detainee on the cell block, or any area other than that specifically designated for that purpose, would seriously compromise the safety of all concerned, including the detainees, and disrupt the good order of the facility. The policies prohibiting non-JTF GTMO personnel on the block have been established to promote appropriate contact and communication with the detainees. Deviating from these policies would jeopardize the order of the facility and the performance of daily operations there.

12. (U) Due to these safety considerations, if counsel visits were permitted in Camp 5 some detainee movements would have to be stopped for the duration of each counsel meeting. This would result in the potential disruption of the movement of all other detainees for recreation, phone calls, and other appointments, and the potential disruption of daily prayers, meals, medical rounds, and mail delivery.

(U) CAMP 6

13. (U) When I assumed command of the Joint Detention Group in June 2012, I reviewed the policies and procedures in place for the operation of each detention camp and, based on my personal knowledge and experience, and in exercise of my authority as JDG commander, I determined that meetings between detainees and non-JTF-GTMO staff should not occur in Camp 6. This decision was based on a desire to ensure the safety and security of the JTF-GTMO command personnel and detainees.

14. (U//FOUO) Camp 6 is a two story maximum security detention facility and is not staffed for counsel visits. Prior to September 2012, two small interview rooms, which were not designed to serve as attorney meeting spaces, were used to facilitate occasional legal visits upon request of counsel. These rooms are much smaller than the legal meeting rooms in Camp Echo, and only 3 people may fit safely in each room, versus 5 people in the Camp Echo rooms. Moreover, due to the distance of these rooms from normal operations, additional guard staff is required to monitor the safety of the counsel from outside of the room for the duration of the meeting, unlike Camp Echo, to ensure appropriate response time. Using the guard staff for duties associated with counsel visits takes them away from the daily operations and activities occurring on each block for which they are needed. The escort guard staff used for external movements could not be used to support attorney visits in Camp 6 because escort staff are assigned numerous moves on a near continuous basis throughout the day, to include movements to medical, inter-camp moves, ICRC visits, and other attorney visits. As it currently stands, JTF-GTMO cannot support all daily movements with current staff levels, so movements must be prioritized. Diverting escort staff for guard duty in support of attorney visits at Camp 6 would further reduce the number of daily moves that can be performed, thus adversely affecting other detainees and camp operations.

15. (U) The location of the interview rooms are located in an operational portion of the Camp. Therefore, normal Camp operations can interfere with attorney-client meetings and guard staff cannot guarantee that attorney-client meetings at Camp 6 will not be interfered with. For example, attorneys may be required to remain in the room during detainee movements, or security incidents may necessitate that meetings be terminated emergently for the safety of the counsel and the detainee. This is in contrast to Camp Echo, where the meeting rooms are specifically sequestered from the other camps for the purpose of external meetings and the potential for interruption or risk to the attorneys is significantly reduced.

16. (U) I determined that the visits presented both a security risk and interfered with the ability of the guards to perform their jobs in a secure manner. Additionally, for security reasons, internal moves could not be conducted in proximity to the attorney visits. Having legal visits moved solely to Camp Echo greatly reduced the security risk posed and any unnecessary interruptions in running the detention facility.

(U) SEARCHES

17. (U//FOUO) Historically, searching of the groin area was not permitted unless authorized by the JDG Commander in an effort to gain detainee compliance by showing a respect to what the JTF believed were detainee cultural sensitivities, and wand searches were only done if the guard

force suspected hidden contraband. While the JTF and I always consider detainee cultural and religious sensitivities to the greatest extent practicable in all of our operations, these sensitivities must be balanced against detainee and guard staff security as is the case in all detention facilities. The former process was contrary to standard procedure found in Army STP 19-31E1-SM, which is the Army standard for conducting frisk searches of detainees or U.S. military prisoners. Since Army Soldiers are not trained on these "modified" search procedures, these searches can be conducted inconsistently between guard members, creating a risk that the searches will not be effective and weapons or contraband will be overlooked. Therefore, as a result of my concerns for safety within the facility, I decided to return to the standard Army search procedure.

18. (U//FOUO). The decision to return to standard search procedures was further informed by a command investigation conducted following the suicide of Adnan Farhan Abd Latif (ISN 156) in September 2012. The investigation results were released in November 2012 and specifically recommended that I, as the JDG Commander, review the policy which prohibited guards from conducting searches of the area from the waist to above the knee of the detainees, which is in contravention of standard search procedures as noted above, as it provided opportunities for detainees to hide medications in that area. Recognizing that an abrupt return to standard search procedures could disrupt camp dynamics, I developed a phased approach in December 2012 to gradually return to the standard search procedures so that both the guard staff and the detainees could adapt to full-body wanding and the groin area search procedures described below. I worked with camp leadership to develop an implementation plan, but did not set hard deadlines as I wanted to remain flexible in implementation so that I could react to changes in the camps. However, the April 2013 transition of Camp 6 from communal living to single cell operations demonstrated that the need for change was immediate. That transition resulted in the discovery of a number of contraband items, including homemade weapons, such as shanks, and prohibited electronic devices. Based on this discovery, I determined that safety and security interests required the implementation of the standard search procedures. On May 3, 2013, we reinstituted standard Army search procedures. As noted above, these search protocols are the same that are currently used at military detention facilities and prisons, and provide additional security measures for the guard force using proven standard procedures to which they were trained.

19. (U//FOUO) Pursuant to the current Standard Operating Procedure, detainees are searched twice during external moves or when the detainee has any external contact using the standard procedures found in STP 19-31E1-SM. Detainees are searched once prior to leaving the facility, and again prior to their return. This procedure is conducted for all moves, not just attorney visits, including phone calls, medical appointments, or any other reason they would have to leave the camp. The search includes a full body frisk conducted in accordance with STP 19-31E1-SM, including, as described below, the groin area between the detainee's waist and mid-thigh, and a full body wand search to ensure the detainees do not possess contraband.

20. (U//FOUO) The frisk search that is conducted is to ensure there is nothing concealed between the clothing and the body. The guard will gather and crush the fabric of the detainee's pant pockets to check for any objects in the pockets. The guard will touch the fabric on the outside of the detainee's waistband, shake it vigorously to dislodge potential contraband, but will not touch the inside of it. If a guard suspects that the detainee has contraband in his waistband, the guard will instruct the detainee to roll down his waistband so the guard can conduct a visual inspection.

Specifically with regard to groin area frisks, at no time is the detainee's actual groin exposed to the staff. The search is conducted by placing the guard's hand as wedge between the scrotum and thigh, and using the flat hand to press against the groin to detect anything foreign attached to the body. A flat hand is used to ensure no contraband is hidden between the buttocks. Army standards require that a guard staff pay "close attention to anything that may be attached to the body, especially the groin area." (STP 19-31E1-SM paragraph (4)(f)(4)(c)).

21. (U//FOUO) The wand search is conducted using a hand-held "wand" metal detector which is passed over the body, to include the groin and buttocks area. Guards are to be careful not to touch the detainee's body with the wand. The wand is held one to two inches from the detainee's body.

(U) DETAINEE TRANSPORTATION FOR LEGAL CALLS AND MEETINGS

22. (U//FOUO) Detainees are transported from Camp 5 or Camp 6 to Camps Delta and Echo for legal calls and meetings in full-sized Ford Econoline 350 Cargo vans. The vans are modified for corrections use, including windowless panels in the rear areas where detainees are seated and a more robust air conditioning system. During the brief movement to the camps, detainees are restrained in a manner consistent with standard procedures for military corrections using a 5-point fabric seatbelt harness. Detainees are not restrained to any restraint points on the floor of the van as there are no restraint points on the floor. On April 1, 2013, JTF-GTMO introduced a number of new vans after completing a routine fleet upgrade and to address complaints from detainees about a lack of air conditioning in the older vans. The new models have larger air ducts, but as a result, have lower ceilings. Unfortunately, the vendor used incorrect specifications and placed benches that are slightly too tall in light of the lower ceiling of the new model. As soon as this error was discovered, JTF-GTMO ordered the correct benches. These benches recently arrived at Guantanamo Bay and JTF-GTMO is in the process of awarding a contract to have the new lower benches installed. Once installed, the new vans will have the same or similar height as the old vans, resolving any issues with taller detainees and guard staff. Some of the older vans are still in use, and if a detainee has a documented medical condition that necessitates it, he is transported in an older van that has higher ceilings. This will continue until the newer vans are retrofitted with the lower benches.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on 3 JUN 13.

John V. Bogdan
Colonel, U.S. Army
Commander, Joint Detention Group, JTF-GTMO

EXHIBIT 2

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD
NUMBER: 5521.05
DATE: June 30, 1997
SUBJECT: Searches of Housing Units, Inmates, and Inmate Work Areas

1. **[PURPOSE AND SCOPE §552.10. In order to further the safe, secure, and orderly running of its institutions, the Bureau of Prisons conducts searches of inmates and of inmate housing and work areas to locate contraband and to deter its introduction and movement. Staff shall employ the least intrusive method of search practicable, as indicated by the type of contraband and the method of suspected introduction.]**

Non-intrusive sensors should be used whenever feasible. When searches are required, staff shall avoid unnecessary force and strive to preserve the dignity of the individual being searched.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Inmates will live and work in a safe and orderly environment.

b. Contraband will be controlled.

c. Searches of inmates and housing and work areas will be conducted without unnecessary force and in ways that, insofar as is practical, preserve the dignity of inmates.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5521.04 Searches of Housing Units, Inmates, and Inmate Work Areas (05/06/91)

b. Directives Referenced

PS 5270.07 Inmate Discipline and Special Housing Units (12/29/87)

[Bracketed Bold - Rules]
Regular Type - Implementing Information

PS 5500.07	Correctional Services Manual (01/31/95)
PS 6060.05	Urine Surveillance to Detect and Deter Illegal Drug Use (11/15/91)

c. Rules cited in this Program Statement are contained in 28 CFR 552.10 through 552.14.

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4184, 3-4185, 3-4186, and 3-4269.

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3A-18, 3-ALDF-3A-19, 3-ALDF-3A-20, 3-ALDF-3E-09.

c. American Correctional Association, 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-3A-01.

d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-3A-17, 1-ABC-3A-18, 1-ABC-3A-19.

5. PRETRIAL/HOLDOVER PROCEDURES. Procedures required in this Program Statement are applicable to pretrial and holdover inmates.

6. **[BODY SEARCHES OF INMATES §552.11**

a. Pat Search. An inspection of an inmate, using the hands, that does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. A metal detector search may be done under the same circumstances.]

The Warden may install metal detection devices within the institution as necessary for the control of contraband. A metal detector search may be done in addition to the pat search.

[Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.]

Any pat search shall be conducted as outlined in the Correctional Services Manual.

[b. Visual Search. A visual inspection of all body surfaces and body cavities.]

Any visual search shall be conducted and documented in the appropriate visual search log book, as outlined in the Correctional Services Manual.

[(1) Staff may conduct a visual search where there is reasonable belief that contraband may be concealed on the person, or a good opportunity for concealment has occurred. For example, placement in a special housing unit (see 28 CFR 541, subpart B), leaving the institution, or re-entry into an institution after contact with the public (after a community trip, court transfer, or after a "contact" visit in a visiting room) is sufficient to justify a visual search. The visual search shall be made in a manner designed to assure as much privacy to the inmate as practicable.]

28 CFR 541, subpart B, refers to the Program Statement on Inmate Discipline and Special Housing Units. Except in minimum security institutions, inmates must undergo a visual search when leaving the institution, for whatever reason (even when being released). Examples of other situations requiring visual searches include:

- processing an inmate into an institution through Receiving and Discharge,
- placing an inmate in the Control Unit, and
- conducting periodic visual searches of inmates returning from outside work details.

[(2) Staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would mean the likely loss of contraband. Where staff of the opposite sex makes a visual search, staff shall document the reasons for the opposite sex search in the inmate's central file.]

While post assignments may not be restricted on the basis of sex, a staff member may not perform routine visual searches of inmates of the opposite sex, such as could be required by assignment to such posts as the visiting room and receiving and discharge units.

[c. <u>Digital or Simple Instrument Search</u>. Inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forceps. A digital or simple instrument search may be conducted only by designated qualified health personnel (for example, physicians, physician assistance, and nurses) upon approval of the Warden or Acting Warden and only if the Warden or Acting Warden or has reasonable belief that an inmate is concealing contraband in or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above.

Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.]

Persons of the opposite sex from the inmate may not observe the digital or simple instrument search.

To document the search staff shall use the Search for Contraband: Digital, Simple Instrument, X-Ray Examination form (BP-313).

[(1) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search. However, the inmate's consent is not required.

(2) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate.]

7. **[CLOSE OBSERVATION §552.12]** ("DRY CELL" STATUS). **[When there is reasonable belief that an inmate has ingested contraband or concealed contraband in a body cavity and the methods of search specified in §552.11 are inappropriate or likely to result in physical injury to the inmate, the Warden or designee may authorize the placement of an inmate in a room or cell for the purpose of staff's closely observing that inmate until the inmate has voided the contraband or until sufficient time has elapsed to preclude the possibility that the inmate is concealing contraband.]**

Such placement is commonly referred to as "dry cell" status. Section 552.11 refers to Section 5 of this Program Statement.

- Regular duty hours: The Warden or designee may authorize dry cell status.

- Other times: The Warden's designee, ordinarily the Operations Lieutenant, in consultation with the Duty Officer and Administrative Duty Officer, may authorize dry cell status.

Dry cell status is often appropriate when staff believe an inmate has ingested contraband. Ordinarily, when staff believe that a female inmate has concealed contraband in her vagina, dry cell status is not the appropriate search method, since it is possible for her to thus conceal contraband for an extended period of time.

Ordinarily, an inmate, of either gender, will not be able to conceal contraband in his or her anal cavity for an extended period of time.

[a. The length of close observation status will be determined on an individual basis. Ordinarily, the Captain, in consultation with qualified health personnel, shall determine when termination is appropriate. The status of an inmate under close observation for as long as three days must be reviewed by the Segregation Review Official (SRO) according to the provisions in §541.22(c) of this chapter, and the initial SRO review conducted within three work days shall be a formal hearing. Maintaining an inmate under close observation beyond seven days requires approval of the Warden, who makes this decision in consultation with the Captain and qualified health personnel.]

Section 541.22 (c) refers to Chapter 9 of the Program Statement on Inmate Discipline and Special Housing Units. That section, which applies to review of inmates housed in administrative detention, requires that the SRO conduct a record review within three work days; however, **for an inmate in dry cell status**, a formal in-person hearing is required.

Since it is unlikely that the objective of dry cell status will not be achieved within seven days, prior approval of the Warden, in consultation with the Captain and appropriate medical staff, is required to continue dry cell status beyond seven days.

[b. The supervising staff member shall be the same sex as the inmate and shall maintain complete and constant visual supervision of the inmate.]

The inmate shall never be allowed freedom to move around unsupervised, or be given the opportunity to dispose of any objects he/she may be concealing.

(1) The supervising staff member shall be issued a portable radio and flashlight.

(2) A daily log and Special Housing Unit Record shall be maintained on each inmate in dry cell status.

(3) Watch calls shall be made by radio.

(4) The Lieutenant shall ensure staff have reviewed the Post Orders prior to assuming the post. If it is necessary for the staff member to leave the area, the Operations Lieutenant shall provide a relief person. The Operations Lieutenant shall brief that person of his/her responsibilities. The inmate must not be left unattended during the relief period.

(5) Trash may not be allowed to accumulate and each item shall be thoroughly searched before disposal.

(6) The inmate is to be given a visual search prior to placement in the room and issued a jump suit (or other suitable loose-fitting clothing). The inmate is to be given a visual search and the inmate's living area must be thoroughly searched at least once each shift, being careful not to set a pattern. Prior to each search, the Operations Lieutenant must be notified and a second person provided for inmate supervision.

(7) Staff shall notify the Operations Lieutenant when contraband is found. The staff member shall secure the contraband in a plastic evidence bag, and proper documentation and chain of evidence shall be maintained.

[c. The supervisor responsible for initiating the close observation watch shall advise the inmate of the conditions and of what is expected.]

Documentation of this notification is to be made through the Administrative Detention Order form (BP-308(52)).

[(1) The inmate shall be required to provide a urine sample within two hours of placement under close observation in accordance with the provisions of §550.30 of this chapter on urine surveillance. A second urine sample is required prior to releasing the inmate from close observation.]

§ 550.30 of this chapter refers to the Program Statement on Urine Surveillance to Detect and Deter Illegal Drug Use.

[(2) The light will be kept on at all times.

(3) No inmate under close observation status may be allowed to come into contact with another inmate.

(4) The inmate ordinarily may not be allowed personal property while under close observation status, except legal and personal mail and a reasonable amount of legal materials when requested. Personal hygiene items will be controlled by staff.

(5) When the inmate is lying on a bed, the inmate shall be required to lie on top of the mattress in full view, weather and room temperature permitting. When necessary for the inmate to use cover, hands must remain visible at all times so that staff can observe any attempt to move contraband.]

An inmate might attempt to remove and/or insert contraband from or into a body cavity, so it is important to constantly observe his or her hands.

[(6) Due to security concerns, the inmate ordinarily may not be permitted recreation outside of the cell.

(7) The inmate is to be served the same meals as those served to the General Population unless medically contraindicated.]

All meals are to be inspected for contraband prior to delivery to the inmate. Any food remaining after the meal, as well as the utensils and tray, are to be thoroughly inspected before being sent back to Food Service.

[(8) No medications may be given to the inmate except for those prescribed and given by hospital personnel. No laxatives may be given except natural laxatives, i.e., coffee, prune juice, etc.

(9) When the inmate needs to urinate and/or defecate, the inmate will be furnished an empty hospital bed pan.]

Staff supervising the inmate shall notify the Operations Lieutenant, who shall furnish a second staff member for supervision. Using rubber gloves, and forceps or a tongue depressor, staff shall closely inspect the results to ascertain whether any contraband is present.

[(10) When the inmate requests to shave, to brush teeth, or other such request, a wash pan and container of water is to be provided for use in the cell.

(11) Institution staff shall be available to the inmate upon request, within reason and within the bounds of security concerns.]

d. Each Captain shall develop Post Orders providing guidance to staff supervising an inmate on dry cell status. Consideration should be given to the use of video camera during the dry cell status.

e. Any questions, emergency, or other situation which arises shall immediately be brought to the attention of the Operations Lieutenant. It is the supervising employee's responsibility to ensure the inmate does not dispose of any concealed item, or to allow an activity which would allow the inmate access to it, thereby jeopardizing the security and good order of the institution, staff, and inmates.

f. It is recommended that one or more rooms or cells be identified as dry cells that meet the following requirements:

(1) The room should be free of hiding places and be equipped with only a bed.

(2) Doors should have proper observation panels to protect staff and to allow unobstructed observation.

(3) Windows in the dry cell shall have a security screen to prevent loss of contraband.

(4) If the designated area is equipped with a toilet and/or sink, the water to the cell should be shut off, and removed prior to the inmate's being allowed into the room. The water shall remain off for the duration of the dry cell process.

(5) Prior to placement of an inmate in dry cell status, the room to be used should be completely searched and determined to be free of contraband. Potential hiding places, if any, for the contraband shall be noted.

8. **[X-RAY, MAJOR INSTRUMENT, FLUOROSCOPE, OR SURGICAL INTRUSION §552.13**

a. The institution physician may authorize use of a fluoroscope, major instrument (including anoscope or vaginal speculum), or surgical intrusion for medical reasons only, with the inmate's consent.]

The use of a fluoroscope, major instrument, or surgical intrusion may be authorized only for medical reasons. The inmate's consent is needed prior to this use.

[b. The institution physician may authorize use of an X-ray for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an X-ray examination is determined necessary for the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive X-ray examination for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The X-ray examination may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and medical file.]

For purpose of this rule, theoretical harm which might result from a single X-ray exposure does not constitute a situation likely to result in serious or lasting medical injury or harm to the inmate.

[(1) The Warden and Regional Director or persons officially acting in that capacity may not redelegate the authority to approve an X-ray examination for the purpose of determining if contraband is present. An Acting Warden or Acting Regional Director may, however, perform this function.]

When the case requires the Warden's approval, and the situation occurs when neither the Warden or Acting Warden is available, the Institution Duty Officer or Administrative Duty Officer should be contacted. Upon determining that an X-ray examination appears warranted, the Duty Officer is to contact the Regional Director or Acting Regional Director for an approval to conduct the examination.

A copy of the completed BP-313 shall be forwarded to the Regional Director who authorized the search.

[(2) Staff shall solicit the inmate's consent prior to the X-ray examination. However, the inmate's consent is not required.

c. The Warden may direct X-rays of inanimate objects where the inmate is not exposed.]

When the case requires Warden's approval and the situation occurs when the Warden is not available, this function may be performed by the Acting Warden, Institution Duty Officer, or Administrative Duty Officer. The authority is not delegated to any other staff member.

Procedures for disposition of contraband found shall be developed locally and in accordance with the FBI and U.S. Attorney requirements for possible prosecution.

9. **[SEARCH OF INMATE HOUSING AND WORK AREAS** §552.14

a. Staff may search an inmate's housing and work area, and personal items contained within those areas, without notice to or prior approval from the inmate and without the inmate's presence.]

Searches of housing units and of work areas shall be completed as outlined in the Correctional Services Manual. Each institution shall establish procedures to ensure all housing units and work areas are **searched routinely, but irregularly,** since such inspections are primarily designed to:

- detect contraband,
- prevent escapes,
- maintain sanitary standards, and
- eliminate fire and safety hazards.

When there is a question of legitimacy of some religious article, the Chaplain should be consulted.

Staff shall maintain written documentation of each housing unit search within the individual housing unit. Work areas (including industries) shall be searched each work day by shop supervisors, and these inspections shall be supplemented with periodic searches by regular search teams. Documentation of daily searches is not required, however, these should be informally monitored to ensure compliance. The Captain shall maintain documentation of search team inspections.

[b. Staff conducting the search shall leave the housing or work area as nearly as practicable in its original order.]

Kathleen M. Hawk
Director

EXHIBIT 3

Frisk a Detainee/U.S. Military Prisoner
191-381-1351

Conditions: You are an on-duty military police Soldier in a facility. You are required to frisk a detainee/U.S. military prisoner. You are given a facility standing operating procedure (SOP), latex gloves, an interpreter (if necessary), a handheld detection device (if necessary), and blank *DA Forms 4137 (Evidence/Property Custody Document)* and *DD Form 2713 (Inmate Observation Report)* and *DD Form 2714 (Inmate Disciplinary Report).*

Standards: Frisk a detainee/U.S. military prisoner, verify that he/she is not carrying any contraband or seize any contraband found, report it to your supervisor, and complete a *DA Form 4137, DD Form 2713,* or *DD Form 2714,* if applicable.

Performance Steps
NOTE: Soldiers will not search a member of the opposite sex, nor conduct the search in view of members of the opposite sex or in view of noncadre members. In extreme cases, a Soldier of the opposite sex may be authorized to perform a frisk search. In this case a handheld detection device is used if available. If a handheld detection device is not available, the Soldier of the opposite sex may complete the search with another Soldier serving as a witness.

NOTE: Before frisking a person in ethnic dress, ensure that you are in an appropriate location, especially if there is a risk of exposure.

NOTE: Personnel should always wear latex gloves while handling detainee/U.S. military prisoner clothing or other items to prevent the spread of disease.

1. Stand directly behind the detainee/U.S. military prisoner, approximately one step back and to the right or left side.
2. Direct the detainee/U.S. military prisoner to give you his/her jacket and anything he/she may be carrying.
3. Position the detainee/U.S. military prisoner. Direct him/her to—
   a. Stand erect with his/her feet approximately shoulderwidth apart.
   b. Untie or loosen his/her bootlaces and turn the down the tops of the boots, if worn.
   c. Roll down his/her sleeves.
   d. Remove his/her headgear and place everything from his/her pockets into his/her headgear.
   e. Place his/her headgear in the palm of his/her right hand.
   f. Hold his/her arms straight out to the side at shoulder height, palms up, and fingers spread.
4. Search a male detainee/U.S. military prisoner. Use the crush and squeeze method, grabbing the material, pulling it away from the skin, and squeezing.
   a. Take the headgear from the detainee/U.S. military prisoner.
   b. Direct the detainee/U.S. military prisoner to look over his shoulder so he can see his headgear while it is searched.
   c. Search his headgear and its contents.
      (1) Bend any seams in the headgear before crushing because razor blades and similar devices may be hidden in the seams.
      (2) Crush the material in your hand.
      (3) Place the headgear and its contents next to the detainee/U.S. military prisoner's right foot after you have checked them.
      (4) Direct the detainee/U.S. military prisoner to turn his head to the front.
   d. Direct the detainee/U.S. military prisoner to run his fingers through his hair and beard (if applicable) using a forward brushing method.
   e. Search the collar and neck. Bend the material before crushing to detect razor blades or similar objects.

Performance Steps

f. Mentally divide the detainee/U.S. military prisoner's body in half lengthwise. Search one side of the body in the following order:
   (1) The arm. Search from shoulder to fingertips.
      (a) Check his armpit and the rest of his arm.
      (b) Direct the detainee/U.S. military prisoner to spread his fingers.
      (c) Look at the palm and between the fingers.
      (d) Direct the detainee/U.S. military prisoner to turn his palm down.
      (e) Check the back of his hand.
   (2) Upper body (back, side, and chest) from shoulder to waist.
      (a) Check pockets and pocket flaps, seams, buttons, and buttonholes closely. Do not put your hands into the detainee/U.S. military prisoner's pockets as they may contain sharp items.
      (b) Direct the detainee/U.S. military prisoner to empty the pocket if an item is detected in it, unless you suspect a weapon that can be used against you. Notify the supervisor in that event.
      (c) Check the rest of the upper body clothing, paying close attention to anything that may be attached to the body, especially to the small of the back.
   (3) Waist and waistband.
      (a) Check from the front to the middle of the back.
      (b) Check between the waist and waistband and between the waistband and belt, if applicable.

NOTE: Do not run your fingers along the waistband or belt; razor blades or other dangerous items could be concealed there. Pull the waistband or belt away from the surface below to check them.

   (4) Lower body, groin, and buttocks.
      (a) Crouch rather than bend when searching the lower half of the detainee/U.S. military prisoner's body.
      (b) Check the trouser fly and zipper, pockets, and seams.
      (c) Check the rest of the area, paying close attention to anything that may be attached to the body, especially in the groin area.
   (5) Shoe.
      (a) Carefully open the top edge of the boot or shoe and look for evidence of contraband.
      (b) Check the outside of the boot or shoe using the crushing method.

NOTE: If the individual is wearing sandals, instruct him to remove them and examine the sandal.

      (c) Direct the detainee/U.S. military prisoner to lift the foot behind him.
      (d) Hold the ankle with one hand and check the heel and sole of the boot or shoe with your free hand making sure the heel and sole are not loose.
      (e) Direct the detainee/U.S. military prisoner to lower his foot.

g. Repeat steps 4f(1) through 4f(5) to search the other side of the detainee/U.S. military prisoner.
h. Seize any contraband that is found during the search.
   (1) Hand the detainee/U.S. military prisoner over to another guard or take him to a holding area, as directed by your supervisor, if contraband is found.
   (2) Prepare *DA Form 4137* and *2714* as required.
   (3) Turn in the completed forms and the contraband to your supervisor.

5. Search a female detainee/U.S. military prisoner. Repeat steps 4a through 4h except when searching—
   a. The upper body. Check—
      (1) The middle of the bra (between the cups), if applicable.
      (2) Around the breasts.
      (3) Below the bra.
      (4) Between the body and the back strap.
      (5) Check the clasp and straps.
   b. A skirt if the detainee/U.S. military prisoner is wearing one. Check all folds or pleats in the skirt while searching the lower body.